

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in view of the following comments, is respectfully requested.

Claims 1, 6, 8, 10-15, 17, 20, 21, and 23-26 are pending in this application.

In the outstanding Office Action, Claims 1, 6, 8, 10-15, 17, 20, 21, and 23-26 were rejected under 35 U.S.C. §103(a) as unpatentable over Yamashita et al. (U.S. Patent No. 5,594,529, hereinafter Yamashita) in view of Kikuchi et al. (U.S. Patent No. 5,606,403, hereinafter Kikuchi).

Briefly recapitulating, a consumable item system as in Claim 1 includes a consumable item apparatus, a consumable item supplying section, a first sensor to detect an item needing replenishment, a second sensor to detect a type or size of the corresponding consumable item needing replenishment, a replenishment signal generating device, a counter to count a duration of time period that the first sensor detects an item needing replenishment, with an adjustable time period set at the user side, an order data transmitting device, and a delivery data transmitting device in the consumable item supplying section.

The consumable item system as in Claim 1 includes “a counter configured to count a duration of time period that said detector detects said signal, said time period being adjustably set at the user side” and a consumable item order data transmitting device that transmits a request for a consumable item that needs to be replenished, “when the signal is detected continuously by the detecting device for more than the time period set at the user side.” In Claim 1, the counter with a user side adjustably set time period serves to detect and eliminate false alert signals that may result in over ordering or an operator having to manually respond and repeatedly deal with a false alert signal. In a non-limiting example the time period of the counter could be adjusted by the user according to the usage condition of various consumable items to best avoid false alert signals Independent Claims 17, 21, 24,

and 25 recite similar features, and such features clearly distinguish the claims over the applied art.

The rejection of Claims 1, 6, 8, 10-15, 17, 20, 21, and 23-26 under 35 U.S.C. §103(a) as unpatentable over Yamashita in view of Kikuchi is respectfully traversed as follows.

As noted in the outstanding Office Action, Yamashita fails to teach or suggest a user adjustable counter that is designed to monitor the time period that a detector detects the alert signal that is generated signaling a consumable item needs replenished.<sup>1</sup> Additionally, Yamashita fails to teach or suggest that the time period for continuously detecting the alert signal before transmitting an order for replenishment is “adjustably set at the user side,” as in Claim 1. In Yamashita, the copy machine supervision device simply contacts the host computer at predetermined time intervals. Further, as noted in the outstanding Office Action, Yamashita discloses a judgment is made to determine whether or not a reset signal has been received from a host computer.<sup>2</sup> If a reset signal has been received from the host computer indicating the supply has been replenished, the toner replenishment count is reinitialized and the values previously set are replaced.<sup>3</sup> However, Yamashita does not disclose a counter that counts a duration of an alert signal based on a “time period being adjustably set at the use side,” as in Claim 1. The adjustable counter in Claim 1 determines when to contact the consumable item supply section.<sup>4</sup> Further, in Yamashita the host computer determines information such as initial thresholds, whereas in the present invention information such as the time period and initial thresholds are determined on the user side.<sup>5</sup>

Likewise, Kikuchi fails to teach or suggest an adjustable counter that counts a continuous time period that an alert signal is detected based on a time period “adjustably set at the user side.” Figures 2 and 4-6 and column 3, lines 20-26 of Kikuchi disclose a time

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<sup>1</sup> Office Action mailed June 22, 2004, page 4, lines 5-6.

<sup>2</sup> Office Action mailed June 22, 2004, page 4, lines 10-14.

<sup>3</sup> Office Action mailed June 22, 2004, page 4, lines 10-14.

<sup>4</sup> Yamashita, column 10, lines 47-50.

<sup>5</sup> Yamashita, column 10, lines 8-10.

period T1 that is used to determine when a toner shortage is reported to an operator in accordance with the previous signal of toner shortage, but does not disclose that the time period for monitoring a signal and generating the toner shortage signal is adjustably set at the user side.<sup>6</sup> Further, there is no teaching or suggestion in Kikuchi that there is any reason to modify the time period T1 after a predetermined time interval of T1 is set.

Therefore, it is respectfully submitted that neither Yamashita nor Kikuchi, either alone or in combination teach or suggest a counter for monitoring a continuous time period that an alert signal is detected, wherein the time period is “adjustably set at the user side.” The combination of the Yamashita and Kikuchi would not result in the present invention since the time period is not adjustably set at the user side in either Yamashita or Kikuchi. Accordingly, it is respectfully submitted that independent Claims 1, 17, 21, 24, and 25 are patentably distinguished over the prior art of Yamashita and Kikuchi. Likewise, it is respectfully submitted that Claims 6, 8, 10-15, 20, and 23 that depend from the independent claims are allowable for at least the same reasons as the independent claims discussed above.

Further, absent hindsight reconstruction using the Applicants’ disclosure of the inventors’ own inventive efforts, there is no motivation to modify Yamashita. The reviewing court for the PTO has recently re-emphasized that core factual finding in a determination of patentability cannot be based on conclusions as to what would be basic knowledge in the art, instead, concrete evidence must be produced. See In re Zurko, 59 USPQ2d 1693, 1697-98 (Fed. Cir. 2001). As further recently noted by the PTO reviewing court, the “case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation ‘[to combine]’ as an ‘essential evidentiary component of a obviousness

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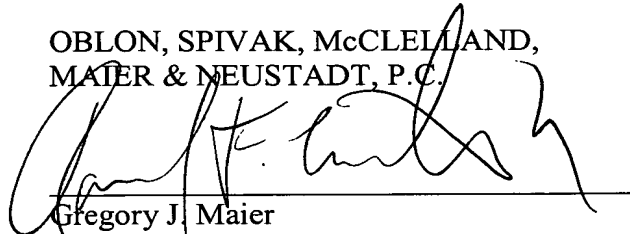
<sup>6</sup> Kikuchi, Abstract.

holding.”” In re Dembiczak, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). No motivation to modify Yamashita has been cited in any of the prior art references.

As no other issues are pending in this application, it is respectfully submitted the present application is now in condition for allowance, and it is hereby respectfully requested this case be passed to issue.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Gregory J. Maier', is written over a horizontal line.

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